



DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony with the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 14, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Sao Ta Foods Joint Stock Company et al. v. United States*, Consol. Court No. 18-00205, sustaining the Department of Commerce (Commerce)'s second remand results pertaining to the administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from the Socialist Republic of Vietnam (Vietnam) covering the period February 1, 2016, through January 31, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's *Final Results* of the administrative review, and that Commerce is amending the *Final Results* with respect to the separate rate (SR) status for Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory.

DATES: Applicable April 24, 2021.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6905.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2018, Commerce published its *Final Results* in the 2016-2017 AD administrative review of shrimp from Vietnam.¹ In the *Final Results*, Commerce determined in relevant part that Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory were not “aka” or trade names of Thuan Phuoc Seafoods and Trading Corporation (Thuan Phuoc) such that they were entitled to Thuan Phuoc’s SR.² As a result, Commerce treated these two factories as part of the Vietnam-wide entity and assigned them the Vietnam-wide rate of 25.76 percent.³

Several interested parties, including Thuan Phuoc, appealed Commerce’s *Final Results*. On January 16, 2020, the CIT found that Commerce’s denial of SR status for Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory was unsupported by substantial evidence because Commerce failed to consider certain information contained in Thuan Phuoc’s separate-rate certification (SRC)⁴ suggesting that the factories were divisions of Thuan Phuoc, rather than distinct entities.⁵ The CIT, thus, ordered Commerce to reconsider or further explain its determination with respect Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory.

In its first remand redetermination, issued on April 30, 2020, Commerce provided further explanation of its determination, in consideration of Thuan Phuoc’s SRC, and continued to find that Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory were separate factories that produced and exported subject merchandise to the United States under their own licenses, rather than “aka” or trade names of Thuan Phuoc.⁶ The CIT remanded for a second time, finding that Commerce failed to explain how it distinguishes when an entity is a separate exporter as

¹ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2016– 2017*, 83 FR 46704 (September 14, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See *Final Results* IDM at Comment 3A.

³ *Id.*

⁴ See Thuan Phuoc Seafoods and Trading Corporation Submission, “Separate Rate Certification,” dated May 15, 2017.

⁵ See *Sao Ta Foods Joint Stock Co. v. United States*, 425 F. Supp. 3d 1314, 1318 (CIT 2020). While interested parties challenged several aspects of Commerce’s *Final Results*, the Court sustained the *Final Results* in all other respects. *Id.* at 1318.

⁶ See *Final Results of Redetermination Pursuant to Court Remand*, dated April 30, 2020 (Remand I), available at <https://enforcement.trade.gov/remands/20-7.pdf>.

opposed to a trade name of another company, failed to address record evidence detracting from its position, and acted in an arbitrary and capricious manner by not giving parties reasonable notice of a change in practice regarding trade names.⁷ The CIT directed Commerce on remand to provide further explanation of its continued denial of SR status to Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory or reconsider its determination.⁸

In its second remand redetermination, issued on December 4, 2020, Commerce complied with the CIT's order and, under respectful protest, reversed the *Final Results* determination wherein Commerce denied SR status to Frozen Seafoods Factory No. 32 and to Seafoods and Foodstuff Factory.⁹ As a result, Commerce assigned these factories Thuan Phuoc's SR of 4.58 percent as determined in the *Final Results*. The CIT sustained Commerce's second remand redetermination on April 14, 2021.¹⁰

Timken Notice

In its decision in *Timken*,¹¹ as clarified by *Diamond Sawblades*,¹² the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's April 14, 2021 judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final*

⁷ See *Sao Ta Foods Joint Stock Company et.al. v. United States*, 475 F. Supp. 3d 1283, 1289-93 (CIT 2020).

⁸ *Id.* at 1293.

⁹ See Final Results of Redetermination Pursuant to Court Remand, dated December 4, 2020 (Remand II), available at <https://enforcement.trade.gov/remands/20-135.pdf>.

¹⁰ See *Sao Ta Foods Joint Stock Company et.al. v. United States*, Consol. Court No, 18-00205, Slip. Op. 21-42 (CIT 2021).

¹¹ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹² See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Results with respect to the SR status for Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory. Specifically, Commerce is granting SR status to Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory, as trade names of Thuan Phuoc, for purposes of the 2016-2017 administrative review. Consequently, we are revising the weighted-average dumping margin assigned to these two exporters, for the period February 1, 2016, through January 31, 2017, from the Vietnam-wide rate of 25.76 percent to 4.58 percent, which was the rate assigned to non-individually examined companies that qualified for a SR in the *Final Results*.¹³

Cash Deposit Requirements

Because Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory have a superseding cash deposit rate, *i.e.*, there has been a final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were exported by Thuan Phuoc, aka Frozen Seafoods Factory No. 32, aka Seafoods and Foodstuff Factory, and were entered, or withdrawn from warehouse, for consumption during the period February 1, 2016, through January 31, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise exported by Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory at the above-noted 4.58 percent rate, in accordance with 19 CFR 351.212.¹⁴

¹³ See *Final Results*, 83 FR at 46705.

¹⁴ Two injunctions have been filed in connection with this litigation, covering exporters other than Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory. Commerce also intends to issue appropriate instructions to CBP upon dissolution of these injunctions.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: April 20, 2021.

Ryan Majerus,
Deputy Assistant Secretary for Policy and Negotiations.

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